

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ORDER

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Judge Purcell recommends the dismissal of this action without prejudice due to Plaintiff's failure to pay the initial partial filing fee,¹ failure to comply with a show cause order,² and failure to prosecute his case.

The case file shows no timely objection or request for an extension of time, even though Plaintiff was expressly informed of his right to object, the procedure for doing so, and the firm waiver rule. Instead, shortly after the R&R was issued, Plaintiff submitted new applications to proceed *in forma pauperis* under 28 U.S.C. § 1915 in two pending cases in this district.³ See Appl. [Doc. No. 10]; see also *Claudio v. Meyer*, Case No. CIV-

¹ See Order Granting Leave to Proceed In Forma Pauperis [Doc. No. 6].

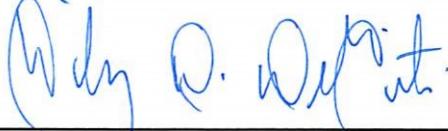
² See Order of March 2, 2021 [Doc. No. 8].

³ Plaintiff's signature on the applications is dated March 23, 2021 (the day of the R&R).

21-92-D, Appl. (W.D. Okla. Mar. 25, 2021). Plaintiff's filing in this case is not responsive to Judge Purcell's findings and recommendation. It leaves unanswered why Plaintiff failed to make a payment of \$6.20 in February 2021 or to comply with a prior order; it does not address why this case should not be dismissed without prejudice under Fed. R. Civ. P. 41(b).⁴ Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in the Report. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, for the reasons stated by Judge Purcell, the Court finds that this action should be dismissed without prejudice.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 9] is ADOPTED. This action is DISMISSED without prejudice to a future filing. A separate judgment of dismissal shall be entered.

IT IS SO ORDERED this 14th day of April, 2021.



TIMOTHY D. DeGIUSTI
Chief United States District Judge

⁴ Plaintiff's application is a non-prisoner form that reflects a change in circumstances – his release from prison – but it appears incomplete in that it shows no income, expenses, obligations, or means of support. Plaintiff's change of circumstances suggests this action may be moot; the Complaint seeks Plaintiff's release on parole (and damages from state officials who are immune from such relief). *See* Compl. [Doc. No. 1] at 11, 12, 14. The Court does not reach the mootness issue due to Plaintiff's lack of written objection to the R&R.